UNITED
NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/1995/7
9 January 1995

ORIGINAL: ENGLISH

Organizational session for 1995
18 January, 7-10 February and
4-5 May 1995
Item 6 of the provisional agenda*

FULL PARTICIPATION BY THE EUROPEAN COMMUNITY IN THE COMMISSION ON SUSTAINABLE DEVELOPMENT

Note by the Secretariat

1. At its resumed substantive session of 1994, on 4 November 1994, the Economic and Social Council had before it a draft decision (E/1994/L.51) entitled "Full participation by the European Community in the Commission on Sustainable Development", submitted by the representative of Germany.

2. Following statements by the President of the Council, the representative of Germany (on behalf of the States members of the United Nations that are members of the European Union) and the observer for Algeria (on behalf of the States members of the United Nations that are members of the Group of 77 and China), the Council decided to defer further consideration of the draft decision to a future meeting of the resumed substantive session of 1994. It also decided to request the Secretariat to prepare a note that would respond to the various questions raised, including legal questions, as formulated by the President of the Council.

3. The views of the Secretariat on those questions are set out in the following paragraphs.

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What is the relationship between rule 74 of the rules of procedure of the functional commissions of the Economic and Social Council, namely "Participation of other intergovernmental organizations" and rule 69, "Participation of non-member States"?

4. With respect to the relationship between rule 69 and rule 74 of the rules of procedure of the functional commissions of the Economic and Social Council (E/5975/Rev.1), it is sufficient to state that rule 69 governs the participation of Members of the United Nations that are not members of a functional commission, and of any other State, in the deliberations of such a commission, while rule 74 governs the participation of intergovernmental organizations in the deliberations of a commission.

What is provided for (i.e. rights and privileges) under rule 69, "Participation of non-member States"?

5. With respect to the rights and privileges of non-member States, rule 69 states as follows:

> "1. The commission shall invite any Member of the United Nations that is not a member of the commission, and any other State, to participate in its deliberations on any matter of particular concern to that State.
>
> "2. A subsidiary organ of the commission shall invite any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State.
>
> "3. A State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the commission or of the subsidiary organ concerned."

6. Thus a non-member State of a commission has the right to be invited by the commission, and its subsidiary organs, to participate in their deliberations on any matter of particular concern to that State. A non-member State may make statements at any time except during explanations of vote by member States of the commission. While a non-member State does not have the right to vote, it does have the right to submit substantive proposals, including amendments, which may be put to the vote at the request of any member of the commission or subsidiary organ concerned. As is the case with all non-members participating in a commission, a non-member State may not make procedural motions which concern the conduct of business; such motions are reserved solely for full members of the body concerned.

What is a "point of order" both generically and specifically as referred to in paragraph (a) of draft decision E/1994/L.51?

7. With respect to the reference to a "point of order" contained in paragraph (a) of draft decision E/1994/L.51, it is for the sponsors of the draft decision to explain their intent. However, according to that paragraph, the European Community will only have the right to raise as a point of order the fact that consultations are continuing among the European Community and its member States on a matter on which a final decision is about to be made. It is clearly stated that this right shall not include the right to challenge the decision of the chair in response to the original point of order. It is clear that, as formulated in the foregoing terms, the right in question refers to the raising of a point of clarification rather than a point of order as understood in the rules of procedure of United Nations organs.

8. For example, the 1971 report of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly, reproduced in annex V to the rules of procedure of the General Assembly (A/520/Rev.15), defines a point of order as "an intervention directed to the presiding officer, requesting him to make use of some power inherent in his office or specifically given him under the rules of procedure ... Points of order ... involve questions necessitating a ruling by the presiding officer, subject to possible appeal." Such an appeal, often referred to as a "challenge", is then put to the vote. If an appeal is carried, the presiding officer has been overruled. It is clear that the so-called "point of order" referred to in paragraph (a) of draft decision E/1994/L.51 does not fall within this meaning of the term but rather constitutes a point of clarification, informing the Council that on a certain issue consultations are still continuing. The President of the Council, its members and the Council as a whole are free to act on that information in any manner which they deem appropriate, without challenge by any non-member of the Council, including the European Community.

9. Moreover, the practice of the United Nations with regard to "true" points of order and points of order used simply to obtain the floor for purposes of clarification is described in the above-mentioned report as follows:

> "Points of order ... are also distinct from requests for information or clarification ... which - while they may have to be dealt with by the presiding officer - do not require rulings from him. However, in established United Nations practice, a representative intending to submit a procedural motion or to seek information or clarification often rises to a 'point of order' as a means of obtaining the floor. The latter usage, which is based on practical grounds, should not be confused with the raising of points of order under rule 73 [114]" (see A/520/Rev.15, rule 71).

10. In 1988, the Legal Counsel advised that while a non-member State of a functional commission of the Economic and Social Council was not entitled to make a point of order within the meaning of the relevant rule of procedure, United Nations practice by which participants rise to a "point of order" as a means of obtaining the floor in order to seek information or clarification

should not be confused with raising "true" points of order under rule 73 [114] (see A/520/Rev.15, rule 71) and which may be entertained by a presiding officer when raised by non-members.

What specifically is meant in paragraph (b) of draft decision E/1994/L.51 by other regional or subregional economic integration organizations and what is implied, as to the role of the Council, in judging "other organizations"?

11. With respect to the interpretation of paragraph (b) of draft decision E/1994/L.51, it is not for the Secretariat to address the intent of the sponsors of the draft decision. It is for the sponsors to indicate their own intent and the implications of their text.

Is this whole process of amending the rules of procedure of functional commissions legal or, more specifically, necessary? Do not the existing rules suffice?

12. With respect to the legality of the process of amending the rules of procedure of the functional commissions, the Council may amend these rules pursuant to rule 77. Furthermore, it may be recalled that the current process is based on General Assembly resolution 47/191 of 22 December 1992, by which the Assembly recommended that the Commission on Sustainable Development "provide for the European Community, within its areas of competence, to participate fully - as will be appropriately defined in the rules of procedure applicable to the Commission - without the right to vote".

13. With respect to whether or not it is necessary to amend the existing rules in order to provide for the full participation of the European Community in the work of the Commission on Sustainable Development, reference should be made to paragraphs 9, 11 and 12 of the report of the Secretary-General on the rules of procedure of the Commission on Sustainable Development (E/1993/12).